

UPPER TRIBUNAL (LANDS CHAMBER)



[2023] UKUT 128 (LC) UTLC Case Number: LC-2023-12

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL
(PROPERTY CHAMBER)

*HOUSING – CIVIL PENALTY – procedure – striking out of appeal by the First-tier Tribunal
– adequacy of reasons for delay – adequacy of reasons for strike-out*

BETWEEN

MR HASAN KAZI

Appellant

-and-

BRADFORD MDC

Respondent

Re: 59 Ashgrove,
Bradford,
West Yorkshire,
BD7 1BL

Judge Elizabeth Cooke
Determination on written representations
Decision Date: 6 June 2023

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Introduction

1. This is Mr Kazi's appeal from an order made by the First-tier Tribunal ("the FTT") in September 2022 striking out his appeal against a financial penalty imposed by the respondent local housing authority. His appeal was struck out because it was out of time.
2. The appeal has been determined under the Tribunal's written representations procedure. Mr Kazi has been represented by NP Legal Services, and the respondent has chosen not to participate in the appeal.

The factual and legal background

3. Mr Kazi is the freeholder of 59 Ashgrove, Bradford. It is a house in multiple occupation; Mr Kazi owns several such properties which, he says, he runs largely by himself. He is 73 years of age.
4. On 23 June 2022 the Bradford Metropolitan District Council issued a final notice of a financial penalty against Mr Kazi in the sum of £13,250, on the ground that he was a person managing 59 Ashgrove and had failed to comply with The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007. A number of failures were listed in the notice, including failure to provide information to the tenants, ineffective fire doors, rubbish in the garden and poor decorative repair.
5. The 2007 regulations were made under section 234 of the Housing Act 2004, which provides (so far as relevant):

“(1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations–

- (a) there are in place satisfactory management arrangements; and
- (b) satisfactory standards of management are observed.

...

(3) A person commits an offence if he fails to comply with a regulation under this section....

(5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

6. Section 249A of the 2004 Act enables the local housing authority to impose a financial penalty as an alternative to prosecution for that offence, if the authority is satisfied beyond

reasonable doubt that the offence has been committed. That is what the respondent did in this case.

7. Schedule 13A to the 2004 Act enables the recipient of a final notice of a financial penalty to appeal to the FTT. The final notice correctly specified the period for doing so, being 28 days from the service of the notice.
8. On 19 August 2022 Mr Kazi submitted his appeal to the FTT. In his covering letter he explained that he appreciated that he was out of time and asked for an extension; he explained that the notice came to his attention on Monday 27 June, and that he fell ill in the middle of July. He tested positive for Covid on 7 August 2022, and had not been well enough to make the application to appeal but was doing so now that he was able.
9. On 16 September 2022 the FTT struck out the appeal on the basis that it was out of time. It noted that it had the power to extend time if satisfied that there was a good reason for the delay, but said:

“The applicant provided written representations in relation to the lateness of the appeal which was received by the Tribunal on 22 August 2022. The Tribunal has considered those representations but concludes that the Applicant has failed to provide a satisfactory explanation as to why he was unable to follow the guidance issued and make his appeal within the time allowed. The final notice is dated 23 June 2022 and the Tribunal did not receive the appeal until 22 August 2022, almost two months later, which is a significant delay. The reasons given are insufficient to explain or justify a delay of this magnitude.”

10. Mr Kazi appeals with permission from this Tribunal.

The appeal

11. The FTT had a discretion as to whether to extend time or to strike out the appeal. Its explanation for striking it out was expressed in entirely generic terms and did not engage with the reason given by the applicant for the delay in submitting the appeal (i.e. that he is elderly and within two weeks or so of receiving the civil penalty notice he contracted Covid from which he then took several weeks to recover, leaving him unable to submit his appeal until 19 August). The FTT did not say whether it accepted that account as truthful, and if not why not; nor did it say why, if it accepted the explanation as true, it found it an inadequate explanation for the relatively short delay in submitting the appeal. It is well known that Covid can cause exhaustion; the delay was of less than a month and so was commensurate with the length of time for which the appellant said he was ill. It may be that the FTT thought that some medical evidence should have been provided, but it is easy to see that such evidence might be very difficult to obtain; and in any event, if that was the problem, the FTT did not say so.
12. It is difficult to escape the conclusion that the FTT either did not take in and give proper consideration to the explanation the appellant gave, so that it failed to take into account a relevant consideration, or did not give reasons why it found the explanation inadequate. The FTT's decision is therefore set aside.

13. The appellant's appeal from the financial penalty is therefore reinstated, and he should apply to the FTT for directions in order to pursue his appeal.

Upper Tribunal Judge Elizabeth Cooke

6 June 2023

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.